



The MRT-RRT Monthly Bulletin

05/2010

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This month's edition of Précis includes an interesting selection of MRT and RRT decisions, and judgment summaries from the High Court, Federal Court and the Federal Magistrates Court. Summaries of MRT decisions address, amongst other things, closely related courses for a Skilled Graduate visa; the difficulties of obtaining official documents from Afghanistan and Pakistan in relation to an Orphan Relative case; and a Bridging E visa case. Protection visa cases this month involve a wide selection of countries and issues, including political opinion in Cameroon; Uyghur ethnicity in China; religious conversion in Egypt; and political opinion in Sudan.

The selection of the Tribunals' Country Advice this month features country of origin information (COI) relating to freedom of association and assembly in Burma, and the extent of bribery and corruption in Rangoon; baptism practices in the Chinese Catholic Church; compulsory military service in Egypt, as well as penalties for draft evasion; the availability of state protection against racially motivated attacks in Fiji; the situation for lesbians in Mongolia; and the difficulties experienced by single women living alone in Pakistan. Click on the Country Advice country headings in the Contents section below to access COI on other countries featured this month.

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MIGRATION REVIEW TRIBUNAL DECISIONS

Business and Skilled visas

0806286

24 March 2010, Melbourne

Mr P Fisher, Member

SKILLED (RESIDENCE) (CLASS VB) – SUBCLASS 887 – SKILLED REGIONAL – CL.887.221 – CONDITION 8539 – REGIONAL WORK

– A delegate of the Minister refused the primary visa applicant's Subclass 887 visa as he did not satisfy cl.887.221 of the Regulations, because he had not complied with condition 8539 to which that visa was subject. At the time of the visa application, the primary visa applicant was the holder of a Subclass 495 Skilled – Independent Regional (Provisional) visa which was subject to condition 8539, which provided that while the holder was in Australia, he must not live, study or work outside a postcode which was specified in the relevant Gazette Notice. The Gazette Notice specified a number of institutions with campuses located in regional and low population growth metropolitan areas, as well as postcode ranges located in these areas for the purposes of where an applicant must study, reside and work. The applicant was a national of Pakistan whose wife was included as the secondary applicant in the visa application. At the time the visa application was lodged, the applicants were living in St Kilda, an inner suburb of Melbourne, and the primary visa applicant was working at a hotel in the Melbourne CBD. The application was refused on the basis that the primary visa applicant was not living in a 'regional area' at the time of application. The applicants submitted that they had lived and worked for two years in regional Victoria, and that after contacting the Department to see whether they could move back to Melbourne, they were informed that they could. Similarly, the primary visa applicant claimed that his new employer contacted the Department to make sure he was permitted to work while holding the Subclass 495 visa, and was assured by the Department that he could. The applicant's representative submitted that the relevant policy provisions set out in the Procedures Advice Manual (PAM) were open to interpretation, noting, for example, that *once provisional GSM visa holders have held their visa for at least two years and abided by the conditions of that visa they are eligible to apply for permanent residence*, and that there was no obligation on them to remain in a regional area until the case was decided.

Held: Decision under review set aside

The Tribunal found that the primary visa applicant was granted a Subclass 495 visa in January 2006, and that the evidence provided from rental agreements, bond authority receipts, utility bills, payslips and letters from employers showed that he had lived and worked in regional Victoria between November 2005 and October 2007. The Tribunal accepted that the applicant did not comply with condition 8539 from February to October 2008, however, it found that cl.887.221 did not demand absolute compliance; rather, it required that applicants, while they were the holders of specified visas, must have complied *substantially* with the conditions to which the visa was subject. The Tribunal found that even before the Subclass 495 visa was granted, the applicant was living and working in regional Victoria. The Tribunal noted that this went to the question of the applicant's intentions, and lent credibility to his claim that after two years in regional Victoria he approached the Department to enquire whether he could return to Melbourne, and was apparently misled into thinking he could do so without either breaching his visa conditions or adversely affecting his permanent visa application. The Tribunal found that he had formed this view from the fact that he openly declared in his application that after two years in regional Victoria he was now living and working in inner Melbourne. The Tribunal found that the evidence indicated that once he was informed that he was in breach of Condition 8539 via the primary decision, the primary visa applicant promptly took steps to rectify the situation by leaving his job and moving back to regional Victoria. The Tribunal was satisfied that the applicant did not deliberately flout condition 8539, and concluded that the breach was not a serious one. Therefore, the Tribunal found that the applicant had complied substantially with condition 8539, and consequently, the Tribunal found that the requirements of cl.887.221 had been met.

0900256
9 April 2010, Brisbane
Mr G Cranwell, Member

TEMPORARY BUSINESS ENTRY (CLASS UC) – SUBCLASS 457 – BUSINESS LONG STAY – CL.457.211 – CRITERION 3004 – SUBSTANTIVE VISA NOT HELD AT TIME OF APPLICATION – A delegate of the Minister refused to grant the applicant a Class UC visa on the basis that the applicant did not satisfy cl.457.211 of the Regulations because he did not hold a substantive visa at the time of application and he did not meet Schedule 3 criteria 3003, 3004 and 3005. The applicant appeared at a hearing before the Tribunal to give evidence and present arguments. He conceded that he did not hold a substantive visa at the time of application and explained that he had been under the impression that his employer had lodged a sponsorship application and that this would be sufficient to enable him to remain in Australia. The applicant claimed that he had been unaware that he had to lodge his own visa application. He stated that he was uninformed and had left matters to the business owner. He acknowledged that he should have done more research. In relation to compelling reasons for the grant of the visa, the applicant stated that he was a hard worker and that this would benefit his employer. He also referred to the fact that he had been in a serious relationship with an Australian citizen for three years, and that they had lived together for two of those years. The applicant stated that, as far as he was aware, he had substantially complied with the conditions of all previous visas, and that he intended to comply with the conditions of the Subclass 457 visa if granted.

Held: Decision under review affirmed

The Tribunal explained Schedule 3 criterion 3004 and the requirement that the Minister (or Tribunal) be satisfied that he was not the holder of a substantive visa at the time of application because of factors beyond his control and that there were compelling reasons which exist for granting the visa sought. The Tribunal found that the applicant was in Australia and that he did not hold a substantive visa at the time of application. Furthermore, the Tribunal took the view that checking whether a visa application had been lodged and whether a visa had been granted, were matters for which the applicant had responsibility and which were within his control. The Tribunal was therefore not satisfied that the applicant was not the holder of a substantive visa because of factors beyond his control and found that cl.3004(c) was not satisfied. As the Tribunal found that cl.3004(c) was not satisfied, it was unnecessary for the Tribunal to consider the application of cl.3004(d) and whether there were compelling circumstances for granting the visa. The Tribunal observed in passing, however, that it had some sympathy for the position in which the applicant found himself in relation to his partner and their longstanding relationship. Nonetheless, as the applicant did not meet Schedule 3 criterion 3004, the Tribunal found that he did not meet the requirements of cl.457.211 of the Regulations and the application for review was affirmed.

0901699
23 April 2010, Melbourne
Ms D Buljan, Member

SKILLED (PROVISIONAL) (CLASS VC) – SUBCLASS 485 – SKILLED GRADUATE – CL.485.213 – CLOSELY RELATED COURSES – A delegate of the Minister refused to grant the applicant a Subclass 485 visa on the basis that the courses which the applicant had completed in Australia were not 'closely related' to her nominated occupation of 'Translator'. In particular, the delegate noted that the subjects studied in the visa applicant's Master of Engineering (Integrated Logistics Management), including Project Management, Risk and Technology Decisions, Engineering Economic Strategy etc, were not complementary to her nominated occupation of 'Translator'. In her application, the visa applicant indicated that she had completed an 'Advanced Diploma of Translating (August 2007 – February 2008) at the Australian Institute of Translating and Interpreting', a 'Master of Engineering' (February 2006 – July 2007) at RMIT University ('RMIT') and a Bachelor of Arts (July 2000 – July 2004) from the Dalian University of Foreign Languages in China. The visa applicant provided a lengthy submission setting out her educational background, history and future career direction; an analysis of the relationship between translation and logistics management; an analysis of the Australian-Chinese bilateral economic relationship and the importance of translation and logistics in maintaining and facilitating this relationship; her work experience in Australia involving both translation and logistics management and the fact that she met the departmental points test with 120 points. A submission from the visa applicant's employer advised that the visa applicant had been employed with the 'Home Barista Institute and The Café Coach' since September 2007, originally as a junior office assistant, being later promoted to the position of 'Business Development Manager of Chinese Division.' The

employer stated that in this latter role, the visa applicant was required to "assist the General Manager to develop and expand the business within the Chinese speaking clientele for coffee courses, workshops, cafe management trainings, cafe consulting and retails product sales. Further evidence was provided in support of the application.

Held: Decision under review set aside

In considering whether the visa applicant's 'Master of Engineering (Integrated Logistics Management)' qualification was 'closely related' to her nominated occupation of 'Translator', the Tribunal noted that, at first glance, it appeared not to be, as described in ASCO. However, in the present case the Tribunal was persuaded, upon closer examination of the role of a 'Translator' in Australia, that a qualification that developed skills in research, data collection, analysis, project management, personnel organisation and communication was closely related to this nominated occupation. The Tribunal also accepted that a 'Translator' may work in a range of fields in Australia, including sectors as diverse as legal, health and business, including distribution and supply. The Tribunal found there was no reason to assume from reading the description set out in ASCO that skills in research, data collection, analysis, project management, personnel organisation and communication were incompatible with the tasks of a 'Translator'. The Tribunal gave weight to the applicant's employer's evidence of how the skills the visa applicant had acquired in her 'Master of Engineering (Integrated Logistics Management)' had complemented her work as a 'Translator' in the setting in which the Home Barista Institute operates, particularly as regards its significant Chinese clientele. She advised that the visa applicant's combined qualifications in integrated logistics, or project management, and translation had assisted the Home Barista Institute to expand into a second business site in Melbourne and to take serious steps towards expanding into mainland China. The Tribunal was satisfied on the evidence before it that the 'Master of Engineering (Integrated Logistics Management)' and the 'Advanced Diploma of Translating' completed by the visa applicant in Australia had left her not only job-ready at the Home Barista Institute, but with skills that would be easily carried across to any translation work environment she may find herself in. Accordingly, the Tribunal remitted the application made by the visa applicant for a Skilled (Provisional) (Class VC) visa for reconsideration with the direction that the visa applicant met Clause 485.213 of the Regulations.

Family visas

0804931

14 April 2010, Brisbane

Ms R Johnston, Member

CHILD (MIGRANT) (CLASS AH) – SUBCLASS 117 – ORPHAN RELATIVE – CL.117.211 – NO OFFICIAL DOCUMENTS – A delegate of the Minister refused to grant the applicants Child visas as he could not be satisfied that their parents were deceased and that they were orphans. The visa applications were accompanied by other material, including several supporting statements referring to the death of the visa applicants' parents and an identity document. However, no official death certificates were provided. The applicants' migration agent submitted that when dealing with clients from countries such as Afghanistan, official documents were likely to be less reliable than those obtained from non-official sources. The migration agent submitted that the statutory declarations provided attested to the death of the visa applicants' parents and should be accepted as evidence that the visa applicants were orphans. At the Tribunal hearing, the review applicant confirmed that she was the sister of the visa applicants and that their parents were deceased. She claimed that she and her spouse had been providing financial support to the visa applicants and despite having an already large family she wanted the visa applicants to be with her in Australia. She also explained that the visa applicants' sister-in-law, who had cared for them since the death of their mother, had since moved to Norway and was unable to continue caring for them. The Tribunal heard evidence from two witnesses who corroborated the review applicant's claims and stated that the visa applicants' two brothers who remained in Iran were unable to care for them. In a post hearing submission the applicants' migration agent provided a statutory declaration describing a telephone conversation she had with the visa applicants' brother in Norway during which he had indicated that he did not want the responsibility of caring for the visa applicants and that he had no objections to them travelling to Australia. A letter from the Senior Islamic Imam cleric of Quetta certifying the visa applicants had lost both parents was also provided to the Tribunal as evidence.

Held: Decision under review set aside

The Tribunal acknowledged the difficulties associated with obtaining 'official documents', such as birth and death certificates, in countries like Afghanistan and Pakistan to provide the level of evidence required by the Department to substantiate applicants' claims. The Tribunal took the view that in such circumstances, alternative evidence may be accepted in lieu of official evidence. The Tribunal referred to the oral evidence of the review applicant and two witnesses, the statutory declarations provided, and a letter from the visa applicants' school principal in Quetta and found that, in the absence of any evidence to the contrary, the parents of the visa applicants and the review applicant had died. The Tribunal noted that according to Hazara custom the eldest male relative in the family generally took responsibility for the guardianship of children when their father has died. It noted, however, that it would be difficult for the visa applicants to travel to Iran, where two of their elder male siblings are presumed to be living. It also accepted that the visa applicants' brother in Norway had made it clear he was unwilling to care for the visa applicants. The Tribunal observed that many of the traditional Afghan support structures for families had broken down due to many years of war, displacement and other socio/political events. The Tribunal accepted the arguments made by the agent that migration to Australia would be in the best interests of the visa applicants who currently live alone and illegally in Quetta, Pakistan. The Tribunal found that the review applicant wanted to give her siblings the opportunity of a better life in Australia, where she and her family were settled. The Tribunal was satisfied that there was no compelling reason to believe that the grant of Subclass 117 visas would not be in the best interests of the visa applicants. Accordingly, the Tribunal found that the visa applicants satisfied the requirements of cl.117.211 and cl.117.221 of the Regulations.

0907831

15 April 2010, Sydney

Ms S Durvasula, Member

CHILD (MIGRANT) (CLASS AH) – SUBCLASS 102 – ADOPTION – CL.102.211 – RESIDENCE OVERSEAS CONTRIVED TO CIRCUMVENT ENTRY REQUIREMENTS – A delegate of the Minister refused to grant the applicant a child visa on the basis that the visa applicant did not satisfy clause 102.211 of the Regulations. The delegate was not satisfied that the adoptive mother's residence overseas was not contrived to circumvent the requirements for entry to Australia of children for adoption. The review applicant's wife advised the Department that she had departed Australia to adopt a child from Sri Lanka because she and her husband had found it too difficult to adopt in Australia. She stated that they had been told there was a long waiting list and they preferred to adopt a child from overseas as it would take less time. In a written submission to the Tribunal, the review applicant advised that he and his wife had contacted several agencies and were told that although they would be able to adopt a child here, the natural parent could take the child away. The review applicant appeared at the Tribunal hearing to give evidence and present arguments. The review applicant advised that his wife had travelled to Sri Lanka solely for the purpose of adopting the child as his sister in Sri Lanka had found a child from a poor family whose parents agreed to the adoption. The review applicant also confirmed that he and his wife adopted the child when his wife was a permanent resident of Australia and he was a citizen. In support of the application, the review applicant provided a copy of the adoption certificate and a letter from his lawyer stating that the adoption had taken place.

Held: Decision under review affirmed

The Tribunal accepted that the applicant was adopted overseas by an Australian permanent resident. The Tribunal also found that the review applicant's wife had been residing overseas for more than 12 months at the time of the visa application and that the visa applicant therefore met paragraphs 102.211(2)(a) and (b). The Tribunal accepted, based on the evidence provided by the review applicant and his wife, that they had approached an adoption agency in Australia and did not wish to proceed with the Australian requirements for adoption as they believed the waiting list was too long and they were under the impression that the natural parents would be able to see the child at any time. The Tribunal found, however, that the visa applicant was not adopted in accordance with the Adoption Convention in an Adoption Convention country and, therefore, he did not meet subclause 102.211(5). Furthermore, the Tribunal found that the sole purpose of the review applicant's wife's travel to Sri Lanka and residence there was to adopt a child. The Tribunal accepted that the review applicant and his wife had the best of intentions in adopting a child overseas but found that the review applicant's wife established residence in Sri Lanka and adopted a child there in order to get around or avoid the Australian state and territory requirements for prospective adoptive

parents. The Tribunal was therefore not satisfied that the residence overseas by one of the adoptive parents was not contrived to circumvent the requirements for entry to Australia of children for adoption. Accordingly, the Tribunal found that the visa applicant did not meet paragraph 102.211(1)(c) and failed to meet subclause 102.211(2). As the visa applicant did not meet any of the subclauses in clause 102.211 the Tribunal affirmed the decision under review.

Partner visas

0900190

8 April 2010, Sydney

Ms P Leehy, Member

PARTNER (PROVISIONAL) (CLASS UF) – SUBCLASS 309 – SPOUSE – CL.309.211 – GENUINE RELATIONSHIP – A delegate of the Minister refused to grant the visa applicant a Partner visa on the basis that he did not satisfy cl.309.211 or cl.309.221 of the Regulations. The delegate was not satisfied that the review applicant and the first named visa applicant were in a spouse relationship within the meaning of the legislation, finding that there was a lack of supporting evidence for the existence of a spouse relationship. The applicants provided statutory declarations in which they claimed to have met at the airport in Accra when the visa applicant had offered the use of his mobile phone to the review applicant whose pre-arranged car had not arrived to collect her. The review applicant later invited the visa applicant to lunch and they got to know each other and fell in love. They claimed that during the review applicant's stay in Ghana they supported and helped each other physically and emotionally and grew very close. Before the review applicant returned to Australia they had a traditional and a formal wedding in Ghana and they claimed they had communicated at least once a week ever since. The review applicant appeared at the Tribunal hearing and the visa applicant gave evidence by phone from Ghana. The applicants also provided the Tribunal with documentary material in support of the application including money transfer receipts, evidence of their correspondence by post and email, photos, bills and statutory declarations by the review applicant and three other persons.

Held: Decision under review set aside

The Tribunal was impressed at the hearing with the review applicant's evident affection for the visa applicant, her devastation at the refusal of the visa application and her determination to ensure that the parties were reunited. The Tribunal noted that the parties gave consistent evidence in relation to their ongoing communication with each other, their plans for the future and their time together in Ghana during the review applicant's recent visit. The Tribunal found that the parties had demonstrated, by their evidence and in particular by the evidence of regular and intimate communication between them, that they were committed to each other and well aware of each other's emotional and other needs. The Tribunal also found that the review applicant and visa applicant were married to each other under a marriage that was recognised as valid for the purposes of the Act. On the evidence before it, the Tribunal was satisfied that the parties saw their relationship as a long-term and exclusive one, to which they were both committed. Accordingly, the Tribunal found that the visa applicant satisfied the requirements of cl.309.211 and cl.309.221 of the Regulations.

0901882

7 April 2010, Sydney

Ms M Ford, Member

PARTNER (MIGRANT) (CLASS BC) – SUBCLASS 100 – SPOUSE – CL.100.221(4) – DOMESTIC VIOLENCE – A delegate of the Minister refused the applicant's Subclass 100 visa application on the basis that there was insufficient evidence to demonstrate that the applicant was the spouse of the sponsor. A letter was received by the Department from the sponsor advising that he had withdrawn his sponsorship, and a subsequent letter was received by the Tribunal from the review applicant's representative advising that the sponsor had a mental illness; that he left home without telling anyone; and that the review applicant had been accepted by a women's refuge. The submission included documents in support of the visa applicant's marriage and outlined details of medication that had been prescribed to the sponsor; hospital discharge summaries; a series of statutory declarations related to domestic violence from the co-

ordinator of a women's refuge; a general practitioner; the visa applicant and the visa applicant's daughters. The Tribunal also received a report from a psychotherapist related to the visa applicant's experiences of domestic violence and four statutory declarations from acquaintances of the sponsor and the visa applicant in which they discussed their knowledge of the relationship and its deterioration due to domestic violence. The visa applicant claimed that shortly after her arrival in Australia the sponsor commenced demonstrated behaviours associated with a mental illness and that he would disappear for unexplained periods of time. The applicant claimed that the sponsor forbade her to attend English classes or to go out on her own and he would follow her if she did go out. She claimed that his behaviour became unpredictable and he would throw things at her and, whilst driving, he would try to push her out of the car. She stated that as time went on he became more violent and abusive and that her daughters became frightened, resulting in one of her daughters moving out to escape his behaviour. The visa applicant claimed that the relationship ended when the applicant returned home to find the sponsor had changed the door lock and she was unable to enter her home, which led to the police being called and the visa applicant and her daughters being given accommodation at a women's refuge.

Held: Decision under review set aside

The Tribunal was satisfied that the relationship between the applicant and the sponsoring spouse had ceased, and that the only issue that arose was whether the applicant had suffered domestic violence as committed by the sponsor. The Tribunal found that the applicant had made a statutory declaration pursuant to r.1.25 alleging that she was the victim of relevant domestic violence, and that in support of the applicant's declaration two further declarations were provided. The Tribunal found that these statutory declarations complied with r.1.26(a)-(f) as they were made by competent persons, and that in each of their opinions, relevant domestic violence had been suffered by the visa applicant as committed by the sponsor. The Tribunal was satisfied that evidence had been presented that domestic violence had occurred, and considering all of the evidence before it, the Tribunal was satisfied that the applicant had suffered relevant domestic violence committed by the sponsor. The Tribunal found that under r.1.23(1)(f) the applicant was taken to have suffered domestic violence and the sponsor was taken to have committed domestic violence in relation to the visa applicant. Therefore, as the relationship between the applicant and sponsor had ceased, and the applicant had suffered domestic violence committed by the sponsor, the Tribunal found that the applicant met the requirements of cl.100.221(4)(b) and (c). Accordingly, the decision under review was set aside.

0907985

8 April 2010, Adelaide

Ms C Wilson, Member

PARTNER (PROVISIONAL) (CLASS UF) – SUBCLASS 309 – SPOUSE – CL.309.211 – R.1.15A – DEFINITION OF SPOUSE – A delegate of the Minister refused to grant the applicant a spouse visa on the basis that the visa applicant did not satisfy cl.309.211 and cl.309.221 of the Regulations because the delegate was not satisfied the parties were in a spousal relationship. The delegate was concerned by the lack of evidence of contact between the parties from the time the parties met in 2006 to the time of visa applicant's proposal in 2007. The delegate was also concerned about inconsistent accounts of how the parties had first met and the lack of knowledge on the visa applicant's part of the review applicant's family and life in Australia. The review applicant appeared before the Tribunal to give evidence and present arguments. The Tribunal also received oral evidence from the visa applicant by telephone from Vietnam. The review applicant spoke about her life in Australia, her children, the development of her relationship with the visa applicant and how they spent their time together in Vietnam during her visits. The visa applicant gave consistent evidence. He demonstrated knowledge of the applicant's children and their lives, gave a consistent account of how they met, how they spend their time together in Vietnam and how often they talk on the phone. He stated that he wished to come to Australia to reunite with his wife and make a happy family. The applicants also submitted a number of documents in support of their application including photographs of their wedding in Vietnam in 2007, money transfer receipts and letters.

Held: Decision under review set aside

The Tribunal found the review applicant and visa applicant to be genuine witnesses and accepted their oral evidence. The Tribunal gave little weight to the inconsistencies in the information provided to the Department. The Tribunal gave more weight to the consistent oral evidence provided at the hearing of how

the relationship developed and how they spent their time together in Vietnam on the six visits the review applicant had made there since 2006. The Tribunal was satisfied on the basis of the oral evidence, telephone records, letters between the parties and the considerable time the couple spent together in 2008 and 2009 that they had demonstrated a commitment to each other. The Tribunal was also satisfied that they had demonstrated a mutual commitment to their relationship, that they relied on each other for emotional support and that the relationship was exclusive. The Tribunal found that, at the time of application, the applicants were in a married relationship within the meaning of r.1.15A(1) and that at the time of decision, they continued to be in a married relationship. The Tribunal therefore found that at the time of the visa application the visa applicant was the spouse, within the meaning of r.1.15A, of the review applicant who is an Australian citizen and met the requirements of cl.309.211(2) of the Regulations. Further, the Tribunal found that at the time of its decision, the applicant continued to be the review applicant's spouse, and satisfied cl.309.221 of the Regulations. Accordingly, the Tribunal set aside the decision and found that the applicant met the requirements for the grant of a spouse visa.

Student visas

0909574

14 April 2010, Sydney

Mr C Packer, Member

STUDENT (TEMPORARY) – SUBCLASS 573 – HIGHER EDUCATION SECTOR – CANCELLATION – S.109 – S.101(B) – INCORRECT ANSWER ON APPLICATION – The visa applicant's Subclass 573 visa was cancelled under s.109 of the Act because the delegate found he did not comply with s.101(b), which provided that a "non-citizen must fill in his or her application form in such a way that ... no incorrect answers are given or provided." The Department of Foreign Affairs and Trade (DFAT) provided copies of an Indian arrest warrant which pertained to the dishonouring of cheques, as well as documents regarding the attempts of Indian authorities to execute an arrest warrant, and advice that the applicant had a court case pending. The applicant's visa application was completed on-line by an education agent, answered to the question "Have you, or any person included in this application to apply for this visa, ever: ...been charged with any offence that is currently awaiting legal action?" gave the answer as "No". The applicant provided a statutory declaration in which he indicated that this was the first he became aware that an arrest warrant had been issued or that he had been charged with an offence in India. He claimed that as he was not aware of these matters, he had not given incorrect answers on his application. The applicant also lodged a submission which addressed the circumstances in which the non-compliance occurred and the hardship which the visa cancellation would cause the applicant and his spouse; various character references including one from his employer in India; the applicant's arguments that the complaint in India was malicious; and a letter from a lawyer in India discussing the complaint and indicating it had now been satisfied by the payment of money, along with a receipt to this effect.

Held: Decision under review set aside

The Tribunal found that although the application was completed and lodged by an education agent on behalf of the applicant, an applicant who did not fill in the application form was taken to have done so if he caused it to be filled in on his behalf. The Tribunal also accepted the DFAT advice that the arrest warrant had been verified as genuine, and found that it was issued before the visa application was made electronically. Therefore, it concluded that the applicant had been charged with an offence that, at the time of the application, was currently awaiting legal action. The Tribunal found that despite the applicant's argument that he was not aware of the arrest warrant or of any offence in India, for the purposes of the provisions relating to visa cancellation under s.109, an answer to a question was incorrect, even if the person who gave the answer or caused the answer to be given did not know the answer was incorrect. The Tribunal referred to independent information from an Indian legal advice service which indicated that the circumstances under which the dishonour of a cheque took place were irrelevant, that is, an offence was made out for the mere act of the dishonour of a cheque, whether or not 'cheating' was involved. The Tribunal also found that despite the fact that the "Execution of Arrest Warrant" document showed that the summons had been sent a number of times without being able to be served, it was not satisfied that this showed the applicant had absconded as claimed, and the Tribunal was not satisfied that the applicant had knowledge of the arrest warrant at the time of the visa application. The Tribunal found that the arrest warrant did not of itself show that the applicant had committed a serious criminal act, and that in light of the nature of the offence, the

Tribunal considered that the correct information would not have led to his visa application being refused. The Tribunal's view was reinforced by the additional information provided by the applicant's lawyer who submitted that an arrest warrant should not have been executed, and noted that the matter had been satisfied by the payment of money in 2007. The Tribunal also noted that the applicant's spouse was a student, and that if the applicant's visa remained cancelled, she too would have to leave Australia. The Tribunal therefore decided that there was non-compliance by the applicant under s.107, however, it considered that the decision to exercise the discretion to cancel the applicant's protection visa was not the preferable decision in the circumstances of this case. Accordingly, the Tribunal set aside the decision under review.

1000685

7 May 2010, Sydney

Ms A Cranston, Member

VOCATIONAL EDUCATION AND TRAINING SECTOR (CLASS TU) – SUBCLASS 572 – CANCELLATION – S.116 – CONDITION 8202 – NOT ENROLLED IN A REGISTERED COURSE – The applicant's Subclass 572 visa was cancelled in January 2010 due to him not being enrolled in a registered course of study since September 2009. The applicant claimed to the Department that his parents had suffered financial difficulties during his last semester of study, and this resulted in the late payment of his fees which led to the cancellation of his confirmation of enrolment. The applicant claimed that he wished to pursue his education in Australia and complete a Bachelor degree and an MBA. The applicant provided to the Tribunal a Certificate of Enrolment for a Certificate III in Business at Mercery College commencing in April 2010 and running until October of that year. He also provided Certificates of Enrolment for the subsequent Certificate IV in Business, and the Diploma of Management, with an end date in April 2012. The applicant claimed before the Tribunal that he was not enrolled in a registered course of study between September 2009 and April 2010 because his tuition fees had not been paid by his parents, who had experienced financial problems and were unable to pay.

Held: Decision under review affirmed

The Tribunal was satisfied that the applicant was not enrolled in a registered course of study from September 2009 until April 2010, and noted that the requirements of condition 8202 did not allow the visa holder to cease to be enrolled in a course. The Tribunal then noted that it must ascertain whether the breach was for exceptional circumstances beyond the applicant's control. The Tribunal found that it must have regard to the Ministerial Guidelines for considering cancellation of student visas for non-compliance with student visa condition 8202, which included giving due regard to a political upheaval or natural disaster in the student's home country, or taking into account written advice from the Department of Education or an education provider that it had concerns about errors or inappropriate actions or omissions in the process leading to the non-compliance and subsequent reporting. The Tribunal found that there was no evidence before it that there was any political upheaval or natural disaster in Bangladesh that had affected the applicant's ability to comply with condition 8202, and similarly, there was no written advice from the Department of Education or an education provider that it had concerns about errors or inappropriate actions or omissions in the process leading to the non-compliance and subsequent reporting. The Tribunal noted that it sympathised with the applicant and his parents, however, it was not persuaded that financial difficulties were necessarily unusual or out of the ordinary, but rather they were a common experience faced by students and their parents. Accordingly, the Tribunal was not satisfied that the applicant's non-compliance was due to exceptional circumstances beyond his control. Therefore, the Tribunal found that in accordance with s.116(3) of the Act, such circumstances were prescribed circumstances in which the visa must be cancelled.

Other visas

1000409

8 April 2010, Melbourne

Mr D Young, Member

SPONSORED (VISITOR) (CLASS UL) – SUBCLASS 679 – SPONSORED FAMILY VISITOR – CL.679.214 – RELATIONSHIP OF APPLICANT AND SPONSOR – INFORMAL ADOPTION – A delegate of the Minister refused to grant the applicant a Subclass 679 visa on the basis that the delegate was not satisfied that the visa applicant was the adoptive mother of the review applicant. The delegate found that documents tendered as evidence of the relationship between the visa applicant and the sponsor were inconsistent and inconclusive. The review applicant claimed the visa applicant was her mother's sister, and after her mother died when she was three months old, she was jointly adopted by the visa applicant and another of her mother's sisters. She claimed that after her mother died, her father left her and her brother in the care of her aunts and he showed no further interest in them. The review applicant claimed she did not know if the adoption had been formalised at that time and that their aunts had merely assumed primary responsibility for their day to day care. However, the review applicant claimed she was formally adopted by her aunts as an adult in 2008 when she applied to sponsor her second husband and her aunts wanted to establish a legally enforceable basis for her to claim against their estates in the event of their deaths. The review applicant claimed that as the adoptive child of spinsters, her standing as the primary beneficiary would be beyond dispute and exclude other claims. She also claimed the visa applicant was the same person who was identified in the family composition document as her aunt and that the translations of the family composition document she had obtained showed some family members' birthdates, including the visa applicant, in the Burmese calendar system. She claimed in the second translation the translator had made a mistake in rendering the visa applicant's birth date. The review applicant claimed she was in a hurry and did not check the dates and only became aware of the discrepancy when it was pointed out by the delegate.

Held: Decision under review affirmed

The Tribunal did not accept that the visa applicant was the adoptive mother of the review applicant which was the central issue in this matter. The Tribunal found that under Australian law, the review applicant's formal adoption as an adult was not recognised; however, the Tribunal took this to imply that the adoption had not been formalised at some earlier point in time. The Tribunal then considered whether the visa applicant was the aunt of the review applicant but found that discrepancies in three documents provided as evidence of the review applicant's identity and the relationship, failed to resolve the questions before it. The Tribunal noted a significant discrepancy between the date of birth in the visa applicant's passport and the date on the translation of family composition document. The Tribunal also had doubts whether the visa applicant was the person identified in the family composition document as the review applicant's aunt. Accordingly, the Tribunal was not satisfied that the visa applicant was the aunt of the review applicant or that their relationship was of a kind contemplated by the Regulations. Accordingly, the Tribunal found that the visa applicant did not satisfy the requirements of cl.679.214 of the Regulations for the grant of a Sponsored Family Visitor visa and it affirmed the decision under review.

1002110

6 April 2010, Sydney

Ms A MacDonald, Deputy Principal Member

BRIDGING E VISA (CLASS WE) – SUBCLASS 050 – BRIDGING GENERAL – COMPLIANCE WITH CONDITIONS 8505 (LIVE AT SPECIFIED ADDRESS) AND 8506 (NOTIFY CHANGE OF ADDRESS) – A delegate of the Minister refused to grant the applicant a Bridging E visa on the basis that, due to the applicant's immigration history, the visa applicant would not abide by conditions placed on a Bridging E visa, and that no amount of security would ensure his compliance with the conditions. The applicant first arrived in Australia in 1989 on a student visa which expired in 1990, and remained in Australia as an unlawful non-citizen. In April 2009 the applicant contacted the Department by phone and arranged to attend an interview to update his visa status. Departmental interview records indicated that the applicant claimed he stayed with a friend or at a community centre, he was not working, he had no money to support himself, and he wanted to remain in Australia. He claimed he would like to depart Australia and apply for a student visa offshore

which would allow him to return to Australia, and he was reminded of the exclusion period which would apply to him due to his unlawful status. The applicant was granted a bridging visa allowing him time to consider his options and he was requested to present to the Department on a specified date; however, he failed to attend. The applicant was located by Departmental officers several months later working in a restaurant. He was again interviewed and he claimed that he did not want to depart Australia and had obtained a travel document purely for identification purposes. He had no intentions of departing Australia and had no funds to facilitate his own departure. The applicant was subsequently detained. At the Tribunal hearing, the applicant's employer stated that he had employed the applicant since January 2010 in his restaurant as a qualified chef and that their business had suffered terribly since the applicant's detention, as they had not been able to find a suitably qualified replacement at short notice. The employer claimed that if the applicant was released from detention he would continue to employ the applicant and he would pay him a salary of \$850 per week and he could reside with him at a specified address. The applicant's employer also said he was prepared to lodge a security of \$10,000 as he was certain the applicant would comply with the conditions imposed. He now knew the applicant's migration history and was still prepared to support the visa application. Financial documents of the restaurant were also provided in support of the application.

Held: Decision under review set aside

The Tribunal accepted that the applicant genuinely regretted his past breaches of immigration law and that he acknowledged that his undecided Subclass 155 application was his last opportunity to regularise his status. However, the Tribunal was concerned that the applicant may not continue to reside at a specified address or that he would advise a change of address, thereby breaching conditions 8505 and 8506. The Tribunal acknowledged that the applicant said he would comply with these conditions. Nonetheless, it was concerned that the applicant had remained in Australia unlawfully for such a significant period of time and he had expressed a strong desire to remain in Australia. The Tribunal was of the view that the applicant's past actions indicated he would not comply with the conditions imposed on the visa if granted. It noted that the applicant's employer had advised he was prepared to lodge a security of \$10,000 such was his faith in the applicant. Although the delegate found that no security would provide a meaningful incentive, the Tribunal considered a security of \$10,000 would provide a meaningful incentive for the applicant to abide by the stated conditions, particularly as the applicant's employer would be providing the money himself and he was aware that he would forfeit the money if the applicant failed to comply with the conditions imposed. Having considered all of the circumstances, particularly the applicant's migration history, the Tribunal was satisfied that a \$10,000 security would provide a meaningful incentive for the visa applicant to comply with the conditions imposed on the visa if granted. Therefore, the applicant met the requirements of cl.050.223 of the Regulations and the decision was set aside.

REFUGEE REVIEW TRIBUNAL DECISIONS

Albania

0908334

30 March 2010, Adelaide

Ms C Wilson, Member

ALBANIA – PARTICULAR SOCIAL GROUP – MEN IN ALBANIA WHO HAVE DISHONOURED THEIR FAMILY BY NOT PRACTISING THE CODE OF KANUN – RELIGION – CATHOLIC – The applicant claimed that, having divorced his wife because she had been unfaithful, under Albanian customary law (the 'Code of Kanun'), he should have killed her. He claimed that he had not done so as he opposed the Kanun and didn't want his daughter to be without parents. He stated that by divorcing his wife he had also dishonoured his own family, who had urged him to kill her. He further claimed that his ex-wife's family had threatened him when they found out that he was planning to travel to Australia and that soon afterwards he was stabbed by an unknown man in Greece. He claimed that he did not report the attack to the Greek police as they discriminate against Albanians and tell Albanians involved in ethnic conflict to go back to Albania to sort it out. He submitted that Albanian authorities could not protect him as northern Albania is lawless and is beyond the control of the authorities. The applicant claimed specifically to fear persecution as a member of several 'particular social groups', including "Men in Albania who are subject to the code of Kanun and Albanian citizens who are subject to the customary law... and are subject to persecution by reason of the inability of the current Albanian government to halt customary law blood feuds or protect those persons who are rendered victims of such feuds in northern Albania". He also claimed to be persecuted because of his race and religion, as an Albanian Catholic. At the Tribunal hearing he claimed that his main fear of returning to Albania or Greece was that he would be killed by his ex-wife's family. He also stated that he feared his own family because they had urged him to kill his wife and he had disgraced them. He submitted that either way, his life was in danger. He noted that if he killed his wife or if he was killed by her family, a blood feud would start between the families. The Tribunal took evidence from the applicant's cousin who supported the applicant's decision not to kill his wife but noted that the applicant's brothers live by the Kanun and had become quite vengeful. The applicant provided a number of documents in support of his claims including psychologists' reports and independent information regarding the Kanun.

Held: Decision under review affirmed

The Tribunal found that the applicant's evidence was consistent with the claims he presented to the Department, the submissions of his migration agent, and the evidence of his witness. On this basis, the Tribunal accepted that the applicant had been targeted by his ex-wife's family and that his own family had pressured and threatened him. The Tribunal also accepted that the applicant was stabbed in Greece and, based on threats made prior to the stabbing, that the attack was organised by his ex-wife's family. The Tribunal accepted that the applicant had a subjective fear and that there was more than a remote chance he could be harmed by his ex-wife's family or his own family if he returned to Albania or Greece. The Tribunal did not, however, accept that the social groups the applicant had claimed membership of, such as 'men in Albania who have dishonoured their families by not practicing the code of Kanun', constituted particular social groups set apart from the rest of the community. Accordingly, the Tribunal did not accept that the harm the applicant feared from his ex-wife's family or his own family was for a Convention reason. The Tribunal also considered the applicant's claims that the State would not protect him because he is Catholic or because the State tolerates the Kanun and cannot or will not protect people caught up in the Kanun. Having had regard to independent country information, the Tribunal did not accept that Catholics face a real chance of Convention related persecution in Albania. Nor did the Tribunal accept that the Albanian authorities would withhold protection from the applicant as a Catholic. The Tribunal referred to independent evidence indicating that steps were being taken by the Albanian authorities to investigate and criminalise actions taken under the Kanun and found that the Albanian State did not accept, tolerate or condone such acts.

Cameroon

0808262

17 March 2010, Melbourne

Ms Linda Kirk, Senior Member

CAMEROON – POLITICAL OPINION – SOCIAL DEMOCRATIC FRONT MEMBER – PARTICULAR SOCIAL GROUP – SOCIAL DEMOCRATIC FRONT MEMBERS WHO ARE FAILED ASYLUM SEEKERS

– The applicant claimed to fear persecution for reasons of his involvement with the Social Democratic Front (SDF) and his participation in demonstrations in Douala in February 2008. He claimed that he became a member of the SDF in Cameroon in 2000 and that his father had also been an SDF member. He claimed to have attended SDF meetings and participated in marches and demonstrations during which he was harassed by police. He also claimed to have been detained, beaten and tortured on several occasions in 2004 and 2005, but never as badly as in February 2008 after he attended a public demonstration against changes to the Constitution. He claimed that, after a confrontation with police, he and many other protesters were forced into trucks and taken to a house where he was severely beaten and tortured and that he saw a number of people killed when they tried to fight back. The applicant claimed he was able to escape after two days and that some weeks later, after he had returned to his home, the police came looking for him. He claimed that although he had escaped, the police forced their way into the house and beat and tortured his fiancée. His fiancée later told him she had provided the police with the addresses of his family, his work, and friends he visited regularly. The applicant claimed that he then sought refuge with a church pastor who let him stay in his church and helped him to obtain a visa to attend World Youth Day in Sydney in July 2008. The applicant provided several documents in support of his application including an SDF membership card.

Held: Decision under review set aside

The Tribunal found the applicant to be a credible witness, whose account of past events was detailed, consistent and conformed with independent evidence sourced by the Tribunal. The Tribunal accepted his description of the circumstances leading to his departure from Cameroon and that he had been an active member of the SDF since 2000, noting that the account he gave of arrests, interrogations and beatings was consistent with the independent country information consulted. The Tribunal found that there was a likelihood that upon return to Cameroon the applicant would be identified by the authorities as a failed asylum seeker because his passport contained a tourist visa to Australia which was valid for a limited duration, and that he may be questioned as to why he had remained in Australia beyond the expiry of this visa. The Tribunal noted that the persecution feared by the applicant was both authorised and perpetrated by the police and security forces of the ruling government and found, therefore, that no effective state protection, in accordance with international standards, would be afforded the applicant anywhere in Cameroon. Accordingly, the Tribunal was satisfied that the applicant faced a real chance of serious harm amounting to persecution for reasons of his membership of the particular social group 'SDF members who are failed asylum seekers' and that he had a well founded fear of persecution for a Convention reason.

China

0909990

23 March 2010, Melbourne

Ms S Muling, Member

CHINA – PARTICULAR SOCIAL GROUP – UYGHURS IN CHINA – ASSOCIATES OF REBIYA KADEER

– The applicant claimed he was an ethnic Uyghur from a wealthy family. He claimed that during the Cultural Revolution his father was paraded in the streets and forced to wear a label stating that he was a "wealthy landlord", and that he was arrested for selling goods and accused of earning money by harming state owned property, which led to him being tormented and forced to hand over all his wealth and belongings to the government. He claimed that his father was sentenced to three years imprisonment as a result of his arrest. The applicant further claimed that on his father's release they opened a business together which quickly expanded. He claimed that on an overseas business trip he met a businesswoman named Rebiya Kadeer and that they, along with many others, started a foundation which dealt with orphaned children. The applicant claimed that the Chinese authorities banned the foundation and accused them of being separatists and providing state secrets to overseas countries. He claimed that Ms Kadeer,

along with many other members, was arrested, and that he was forced into hiding and was eventually found and spent 15 days in jail. The applicant claimed that the authorities were then able to arrest and interrogate him at any time, which eventually forced him to come to Australia to escape this treatment. He stated that the police were still trying to locate him and that his life would be in danger if he were to return to China. The applicant provided a statement from the East Turkistan Australian Association which claimed that he was one of the originators of the foundation and that his relationship with Ms Kadeer would make him vulnerable. The applicant claimed that the police had visited his wife and questioned her about his absence, their telephone was being monitored and that a security guard had been placed outside their home to record anyone who visited. The applicant claimed that he had not sought out Ms Kadeer during her recent visit to Australia as he was afraid that there would be spies monitoring her visit and that there would be repercussions for his family in China.

Held: Decision under review set aside

The Tribunal made enquiries to the Uyghur American Association in Washington DC regarding the existence of the foundation and the applicant's membership. The Association responded that it had spoken with Ms Kadeer who confirmed that she had established a fund to help Uyghur women and children by providing them with opportunities for education, and that the Chinese government had shut it down fearing its influence. It was also reported that Ms Kadeer believed the applicant was one of the founding members. The Tribunal accepted that the applicant was an ethnic Uyghur and that he and his family had experienced discrimination in the past as a result of their Uyghur ethnicity. The Tribunal also accepted, in view of independent advice, that the applicant had a long-standing association with Ms Kadeer through his business dealings with her and his membership of a welfare foundation, which was established with Ms Kadeer's support, to provide opportunities to educate Uyghurs. The Tribunal had regard to the applicant's failure to contact Ms Kadeer when she was in Australia given their past relationship as business people and philanthropists, however, the Tribunal accepted the applicant's explanation that it may have placed the applicant's family at risk given the independent information on the monitoring of Uyghurs in Australia by the Chinese authorities. The Tribunal accepted as plausible the applicant's evidence that he was questioned about the foundation on numerous occasions and that he was arrested and detained for a period of fifteen days, and that his wife had been questioned on several occasions about the whereabouts of the applicant. The Tribunal noted that the Chinese authorities had accused Ms Kadeer of planning and organising various protests in 2009 and in light of this, the Tribunal accepted the applicant's claims that those identified as her associates had been targeted in their aftermath. The Tribunal found that the applicant could be regarded by Chinese government officials as having a political opinion supporting greater autonomy for the Uyghur people in Xinjiang. For this reason, the Tribunal found that there was a real chance of the applicant coming to the attention of the authorities upon his return to China and of facing serious harm amounting to persecution, including arbitrary arrest and detention accompanied by serious mistreatment, for reasons of his political opinion as well as his Uyghur race and Muslim religion. In these circumstances, the Tribunal did not accept that the applicant would be able to avail himself of state protection and found that the applicant's fear of persecution on return to China was well-founded.

1000124

9 April 2010, Sydney

Ms M Moustafine, Member

CHINA – NO CONVENTION NEXUS – CORRUPT OFFICIALS – CREDIBILITY – The applicant claimed to fear persecution for exposing corrupt government officials in China. The applicant claimed that he owned a business which won a government contract in 2006. After winning the bid, he hired workers and borrowed money from a bank, relatives and friends to complete the work. He claimed he was asked to pay a bribe to an official and when he ignored this request, the official found fault with the project at every opportunity. He claimed that he swallowed his grievance and tried to fix everything; however, when the project ended and it was time to settle the debt, the government claimed they could not pay him due to financial difficulties. He claimed this meant he was unable to pay his workers or to repay the bank loan so he organised a number of workers to demonstrate in front of the government office to force them to pay but they were taken to the police station and charged with 'disturbing public order'. He claimed he was detained for a number of days, beaten and brutally tortured. The applicant claimed that following his release from detention he breached the reporting conditions imposed on him by police, and he was threatened by mafia and corrupt officials so he fled to Australia. At the Tribunal hearing, the applicant claimed that after his departure from China, the mafia had phoned his wife and made a death threat. He claimed that although his family in China had met

with the government official since his departure, he had still not been paid all of the money despite reporting the corrupt official. He further claimed that shortly before his departure for Australia, his village, including his house, had been demolished to make way for infrastructure for which his wife received very little compensation.

Held: Decision under review affirmed

The Tribunal did not accept that the applicant was a truthful, reliable or credible witness. The Tribunal had regard to serious inconsistencies in the applicant's evidence on central aspects of his claim and found various aspects of the applicant's evidence raised doubts as to whether he ran a company or project as claimed. The Tribunal noted that the applicant could not provide the address of the business he claimed to have run for two years. The Tribunal also found inconsistencies in the applicant's evidence regarding his education level, his employment history and it noted that the applicant was unable to offer comments or respond when asked about these inconsistencies. Nor did the applicant comment or respond to statements by his son that he had worked in China as a tradesman who undertook other work. The Tribunal found the applicant's credibility was further undermined by inconsistencies regarding his claims following his release from detention. The Tribunal did not accept that the applicant was required to report to the police or that his family was threatened by the mafia. The Tribunal considered it significant that he did not seek protection until more than two years after arriving in Australia and then, only after his arrest. The Tribunal's view was that the applicant had fabricated his claims and found that he was not truthful about his experiences in China or the reasons he feared returning. The Tribunal did not accept he had ever owned a business, won a government contract, organized a demonstration, or that he was arrested and detained. It also did not accept that he had breached reporting conditions and was threatened by mafia and corrupt officials. Accordingly, the Tribunal did not accept that the applicant had a genuine subjective fear that he would be arrested by police and other government officials whose corruption he had revealed if he were to return to China. Therefore, the Tribunal was not satisfied that the applicant had a well founded fear of persecution for a Convention reason and the Tribunal affirmed the decision under review.

1001270

20 April 2010, Sydney

Mr D O'Brien, Principal Member

CHINA – POLITICAL OPINION – COMMUNIST PARTY – LAND ACQUISITION – The applicant claimed that in October 2008 he was asked to go to a meeting of the town government where he was told that a South Korean businessman was looking for a site to establish a large processing plant. The applicant claimed his farm had been selected as the ideal site and the Town Party Committee had concluded that the site should be sold for this purpose. The applicant claimed that he and his wife eventually agreed and they were offered 10,000 yuan per mu of land and 600,000 yuan for buildings, equipment and stock under a compensation agreement. After the applicant had signed the agreement, he claimed he was told that due to the global financial crisis, the South Korean company was unwilling to proceed unless the price reduced to 5,000 yuan per mu and 200,000 yuan for buildings, equipment and stock. The applicant refused as this meant a loss for him of almost 300,000 yuan. The applicant claimed he was then called to a meeting at a restaurant where those present got the applicant drunk. After the meeting he was presented with a copy of an agreement with his forged signature and fingerprint. The applicant claimed that the local Communist Party Secretary corruptly colluded with his cousin to forcibly acquire his farm at an unfair price. The applicant lodged a complaint with his local county government. As a result, he was kidnapped by underground elements who brutally beat him. He claimed his life was threatened and he was told to cease his petition. The applicant claimed his wife didn't want him to take the matter further but, after he recovered, he decided to make a further petition at the provincial capital level. When heading off to this appointment, he claimed he was again kidnapped and detained for a day, given a packet of cash and warned not to take the matter further. After returning home and discussing the matter with his wife, he decided to flee to Australia due to the persecution he had suffered.

Held: Decision under review set aside

The Tribunal accepted that the applicant had been a chicken farmer in Hebei Province and that his land was expropriated. The Tribunal also accepted the applicant's account of the failure to pay him the proper compensation for his land and found it was consistent with country information indicating that local officials were frequently corruptly involved in land acquisitions. The Tribunal had great difficulty understanding how

the applicant could have put himself in a position where, under the influence of liquor, his assent was obtained for compensation to which he did not agree. However, the Tribunal accepted the applicant's explanation that, in the Chinese cultural way, he agreed to attend the meeting because he wanted to please the government officials in the hope that they might not pursue the expropriation of his farm. The Tribunal also accepted that it was not practically open to the applicant to seek legal redress through the courts to vindicate his rights under the first compensation agreement he signed. The Tribunal was troubled by the circumstances which the applicant described of his two kidnappings, in the first of which he was severely beaten. However, the Tribunal accepted that the applicant was harmed as a result of protesting against the acquisition of his farm and that the harm he suffered was serious harm which involved systematic and discriminatory conduct. The Tribunal also accepted that, with the limited compensation funds the applicant received, he paid out his neighbours for the lease obligations he owed to them and used the balance to travel to Australia. The Tribunal accepted that the bank was not paid funds due to it under the mortgage and, as a result, his family house had been sealed by the PSB and his family was living in difficult circumstances elsewhere. Accordingly, the Tribunal considered that the applicant had a genuine fear of persecution based on his political opinion and that he had suffered persecution in the past at the hands of, or at the behest of, a powerful Communist Party official and the persons who had engaged in that persecution had made threats upon his life. Also, the fact that his house had been sealed up by the PSB since he left China suggests that Communist Party officials may still wish to cause him serious harm if he were to return to China and that he would be vulnerable wherever he resided in China. The Tribunal was therefore satisfied that the applicant had a genuine fear founded upon a real chance of persecution for his political opinion. Accordingly, the Tribunal was satisfied that the applicant was a person to whom Australia had protection obligations under the Refugees Convention.

Congo, Democratic Republic of

1000089

12 April 2010, Sydney

Ms S Leal, Member

DEMOCRATIC REPUBLIC OF CONGO – ETHNICITY – NORTH KIVU TRIBE MISTAKEN FOR BANYAMULENGE – THIRD COUNTRY PROTECTION – The applicant claimed to fear persecution for reasons of his race, as a member of a tribe from the North Kivu area of the Democratic Republic of Congo (DRC). The applicant claimed that as a member of his tribe, he physically and linguistically resembled the Banyamulenge people, who were the subject of discrimination and persecution in the DRC. He claimed that his father, who had escaped from tribal conflict in the eastern part of the country to Kinshasa, experienced discrimination due to his tribal background and had to move to another country to find work. The applicant claimed that he and his family had followed his father to that country in 2001 and he stated that he had resided there for nine years before coming to Australia. He described himself as a 'temporary resident' of that country. The applicant claimed to fear returning to the DRC because he would be discriminated against on the basis of his ethnicity. He claimed to fear xenophobic attacks and bullying as a member of a minority tribe, as well as being mistaken for a Banyamulenge person and persecuted on that basis. The delegate refused the application on the basis that the applicant had the right to reside and remain in a third country so did not proceed to consider whether the applicant had a well-founded fear of being persecuted in the DRC for a convention reason. The applicant subsequently provided further written and oral evidence to the Tribunal including evidence about his right to enter and reside in a third country. He claimed that his third country visa was contingent upon his father's work visa and his father gave evidence, by telephone from overseas, that there was little certainty for him and his family given that he is employed on a contractual basis.

Held: Decision under review set aside

The Tribunal found the applicant to be an honest, credible and intelligent witness whose evidence was given in a forthright and open manner. The Tribunal also noted that without prior warning, the applicant's father corroborated much of his son's evidence. The Tribunal noted that country information indicated discrimination against all ethnic minorities was widespread within the DRC. It also referred to country of origin information which confirmed that like the Banyamulenge, the applicant's tribe was an ethnic group found in the 'Grand Kivu' area. The Tribunal acknowledged that independent information indicated that the conflict in the DRC remained horrific; that the Banyamulenge are widely held responsible for the ongoing

violence and, for this reason, are discriminated against and persecuted throughout the country. The Tribunal accepted that there were physical and linguistic similarities between members of the applicant's tribe and Banyamulenge people and found, therefore, that there was a real risk of the applicant being mistaken for a Banyamulenge person and subjected to persecution for this reason. Furthermore, the Tribunal's enquiries could not confirm that the applicant would be certain to gain re-entrance into a third country and it was therefore not satisfied that the applicant had a legally enforceable right to enter and reside in any country other than his country of nationality, the DRC. Accordingly, the Tribunal was satisfied that the applicant faced a real chance of serious harm amounting to persecution for reasons of his real or imputed political opinion and that he had a well founded fear of persecution for a Convention reason.

Egypt

0909075

1 April 2010, Sydney

Mr S Roushan, Member

EGYPT – RELIGION – COPTIC CHRISTIAN – The applicant claimed to fear persecution for reasons of his religion as a devout Coptic Christian. In a written statement, the applicant claimed to have fallen in love and formed a relationship with a Muslim female work colleague, Person X. He claimed they loved each other very much, but their relationship remained a secret because her parents were "fanatical Muslims". He claimed that, prior to entering this relationship, he preached to her about Jesus Christ and she was very interested despite coming from a conservative religious family. He claimed that in Egypt, it is illegal for Christians to preach the Bible to Muslims or for Muslims to convert to another religion. The applicant further claimed that Person X's father made her wear the "chador", which she bitterly resented. Also, her sisters were forced to marry at a young age and her parents put pressure on her to leave work and marry. The applicant claimed that although they fell in love and planned to marry, this was not possible because of their different religious beliefs. In 2008, Person X converted to Christianity but the priest who baptised her refused to marry them and told them they should marry outside Egypt. When Person X suddenly stopped going to work, the applicant asked her younger sister why and he was told to keep away from her because he had caused a lot of grief. One week later, he claimed he received a threatening telephone call at work from Person X's father who said that he knew about Person X's conversion and relationship with him and he declared that he was going to kill them both. Following this, the applicant became gravely concerned for both their safety so he applied for a Student visa to travel to Australia. He claimed it was also his intention to assist Person X more effectively in Australia by, possibly, sponsoring her. He claimed he received a telephone call from Person X who informed him that she had managed to escape to Lebanon where she is now staying with a Christian girlfriend. She also informed him that prior to her departure, she was severely beaten by her father and brother requiring hospitalisation but she managed to escape from the hospital and leave Egypt. The applicant claimed that prior to his departure from Egypt, he was severely beaten by Person X's father and brother when leaving work. He sustained a serious back injury, numerous cuts to the head and body and was hospitalised for a number of days. He claimed that soon after his departure from Egypt, Person X's brother visited his home and assaulted his father. He claimed that they also inflicted damage on his family's property and on his parent's vehicle which was parked outside. Following the assault Person X's family declared that they would continue the violent attacks as a means of avenging his actions. The applicant claimed that his family in Egypt live in constant fear of Person X's family who continue to threaten them and have attacked the family home on two further occasions. He claimed that he would be unable to rely on the authorities for protection if he were to return to Egypt because of his involvement in converting a Muslim woman.

Held: Decision under review set aside

The Tribunal found that the applicant was a Coptic Christian and it accepted his account of his relationship with Person X, his role in introducing her to Christianity and her subsequent conversion from Islam to Christianity. The Tribunal also accepted that his relationship with Person X and her conversion to Christianity were eventually discovered by Person X's family who then subjected her to continuous harassment and physical assault. The Tribunal also accepted that she escaped Egypt for Lebanon with the assistance of a Coptic priest and that the applicant was threatened and, sometime later in 2008, the applicant was severely assaulted by members of Person X's family. The Tribunal accepted that this incident amounted to serious harm and it was satisfied that the applicant's religion and his role in Person X's conversion were the essential

and significant reasons for the harm he suffered. Based on independent country information, the Tribunal accepted that there was a real chance that the applicant would face significant harassment or serious physical harm by members of Person X's family in Egypt. The Tribunal was satisfied that such treatment would amount to serious harm and that the harm the applicant feared involves systematic and discriminatory conduct, in that it is deliberate or intentional and involves selective harassment for a Convention reason. The Tribunal was satisfied that the applicant's religion was the essential and significant reasons for the persecution feared by him. For these reasons, the Tribunal was satisfied that the applicant's fear of persecution was well-founded. Therefore, the Tribunal was satisfied that the applicant was a person to whom Australia had protection obligations under the Refugees Convention and that the applicant satisfied the criterion for a protection visa.

India

0908372

23 April 2010, Melbourne

Mr J Atkins, Member

INDIA – NO CONVENTION NEXUS – THREATS BY MONEY LENDERS – The applicant claimed that he had operated a business involving the manufacture of clothing garments which had been started by his family and run by his father for many years before he took over the management of the business. Following this, his father concentrated on his investments on the Indian stock exchange. He claimed that due to heavy losses, his father borrowed 60 lakhs rupees from money lenders and he was forced to sell the business, a property and some gold jewellery. The applicant claimed that he paid 10 or 15 lakhs rupees to the money lenders with the balance being divided between the applicant and his father. He claimed that the family then moved to Mumbai to avoid the money lenders as they had threatened physical violence and he feared that he may be killed if he did not repay his father's debt. The applicant claimed that his parents later returned to their home city where his father was soon discovered by the money lenders. During an argument, the applicant claimed the money lenders pushed his father and he fell and hit his head and subsequently died from his injuries. However, the applicant could not complain to the local police as the people who killed his father were criminal types and, in India, the police would run with the money. The applicant claimed that the money lenders had given him a year in which to come up with the money and that if he could get permission to work in Australia he would be able to repay the money lenders. He claimed that he could not relocate in India as the money lenders would find him, as they had done when he moved to Mumbai.

Held: Decision under review affirmed

The Tribunal wrote to the applicant under s.424a of the *Migration Act* inviting him to comment or respond to information which may have resulted in the Tribunal refusing his Protection visa application. The Tribunal noted that the applicant subsequently telephoned the Tribunal advising that he would not be responding and that he had decided to leave the country. The Tribunal further noted that the applicant wrote to the Department advising that he was going to India permanently, and a further check confirmed that the visa applicant had left Australia. The Tribunal was satisfied that the applicant was not in Australia, and that therefore the applicant did not satisfy the requirements of s.36(2) and could not be granted a Protection visa. Accordingly, the Tribunal found that the visa applicant was not a person to whom Australia had protection obligations under the Refugees Convention.

Lebanon

1000249

7 April 2010, Sydney

Ms J Marquard, Member

LEBANON – RELIGION – CHRISTIAN – The applicant claimed to fear persecution for reasons of his Christian religion. In his application, the applicant claimed that he left his village because of the civil war. He referred to an incident in 1975 in which 2000 Muslim extremist soldiers invaded his village. He also claimed that in 1981 another incident occurred in which his family was shot at and his arm was injured. He claimed that both his father and sibling also suffered serious injuries and that their family home was destroyed. He

claimed that these incidents were motivated by a desire by Muslim fundamentalists to kill Christians and keep them out of the area. The applicant further claimed that the fundamentalist group responsible for these incidents was still strong in the north of Lebanon and that he feared being harmed or killed if he were to return. The applicant claimed that for roughly two decades he and his family kept changing homes in Lebanon, having no real place to call their own. He claimed they found it hard living in Muslim dominated villages as they felt threatened because the town from which they came was totally Muslim. He said he feared the group *Al Tefkir Wal Hijra*, which was instrumental in the earlier killings however state authorities could not protect him because they do not have the capacity to do so. He said the authorities had been unable to help his family in the past. In the 1990's when his parents migrated to Australia, he claimed he stayed behind with his sibling who was newly married however, he said he felt like an intruder there. He visited his parents two years after they migrated to Australia and found they needed his care.

Held: Decision under review affirmed

The Tribunal considered independent country information and found that the town the applicant came from was a Muslim stronghold and had a history of violence towards Christians. The Tribunal accepted the applicant's evidence that he feared serious harm if he were to return there. While the Tribunal found that the possibility of persecution occurring to the applicant was not very high, it found there was a real substantial basis for his fear, based on the history of attacks in the village and the political climate in the area generally, even though violence appeared to be sporadic. The Tribunal was therefore satisfied that the persecution involved serious harm, considering the activities of *Al Tefkir Wal Hijra* in the past, and systematic and discriminatory conduct, in that Christians in that area may be targeted in a non-random and deliberate way, as they had in the past. Furthermore, although the threat of harm was not the product of government policy, it appeared that in this region of Lebanon the government had failed or been unable to protect the applicant from persecution. The Tribunal found that there was a history of state failure to pursue prosecution of violence perpetrated by religiously-affiliated political groups or militia, which may have been largely due to the problems of resourcing. Accordingly, the Tribunal accepted that the applicant had a well-founded fear of persecution were he to return in the reasonably foreseeable future. However, the Tribunal found that, even if the applicant were at risk of persecution in his home town, it was satisfied that it would be reasonable for him to relocate to a region where there was no appreciable risk of persecution. The Tribunal found that, although there may be violence in Lebanon generally, the Tribunal was not satisfied that this violence would be directed against the applicant for the essential and significant reason of his religion. In light of country information that there are areas in Lebanon where Christians can live safely; that the applicant had been able to live in other Christian villages safely since 1981; and that he has family members living there, the Tribunal was satisfied that it would be reasonable for him to relocate to a Christian region of Lebanon. Accordingly, the Tribunal found that it would be reasonable for the applicant to relocate to one of those areas in the reasonably foreseeable future and the Tribunal affirmed the decision under review finding that the applicant was not a person to whom Australia had protection obligations under the Refugees Convention.

Papua New Guinea

1001087

7 April 2010, Sydney

Mr A Mullin, Member

PAPUA NEW GUINEA – NO CONVENTION NEXUS – FAMILY DISPUTE – TRIBAL VIOLENCE – The applicant claimed that he was sponsored to come to Australia by an Australian company and that eventually he wanted to bring his family to migrate but the company refused to sponsor them. He claimed that he had worked in Australia and remitted money to his family overseas and he returned to see them when he was able. The applicant claimed that due to unsafe working conditions he suffered a permanent injury in an industrial accident and, despite two operations, it could not be corrected. He claimed that the injury made it difficult for him to work and that his subsequent application for a Skilled visa was refused because of this, leading to his employment being terminated. This resulted in him suffering depression, undertaking excessive drinking and having suicidal thoughts. The applicant claimed that his wife threatened to attack him because he had not taken her to Australia, and that he heard from family members that she was having an affair, so he returned to Papua New Guinea. He claimed that he went to his village where he was attacked with machetes by her brothers who were under the impression that he wanted to leave her and marry

another woman. This resulted in cuts to his hands and head. He claimed that his own tribesmen wanted to attack his wife's brothers in revenge but he dissuaded them for fear of starting a tribal war. The applicant claimed that he would not be safe in his village as his wife had organised a criminal gang who had threatened his life. He further claimed that, as those who wished to harm him were tribal people, the payback system would be a continual problem, and that there was no proper legal system and no police protection for ordinary people. The applicant submitted documents relating to his employment in Australia, a medical report confirming his work injury, along with a letter on the letterhead of the Royal Papua New Guinea Constabulary, written by a high level police officer, who confirmed that the applicant had been injured when he was attacked by his estranged wife and her relatives and that he believed the perpetrators had shown that they were capable of carrying out their threats.

Held: Decision under review affirmed

The Tribunal noted that the applicant had proven to be a reliable witness and that it was satisfied as to the credibility of his claimed fear of harm in Papua New Guinea. The Tribunal also accepted as credible the evidence of the police officer who provided a written statement in support of the applicant's claims. The Tribunal found there was a degree of speculation in his claim that members of different tribes would wish to harm him if he were to return to Papua New Guinea, and the likelihood that they would have the capacity or will to do so did not appear to be very large. Nonetheless, it accepted that this was more than a remote possibility and, on this basis, the Tribunal was satisfied there was a real chance that he would suffer serious harm. After reviewing the evidence, the Tribunal found that the harm which the applicant feared flowed from purely personal circumstances having to do with the breakdown of his marriage, the enmity of his former wife and her tribal relatives, and the consequences of the incident when he was attacked. The Tribunal considered whether the applicant would be denied protection by the authorities for a Convention reason and found that, although he may have had little confidence in the ability of the police to protect him, he had provided no opportunity since the initial incident for them to do so. Further, the Tribunal found that there was nothing in the applicant's evidence to suggest that, within the limits of their resources and capabilities, the police would deny him protection for a Convention related reason or that they would discriminate against him in any way. Therefore, the Tribunal was not satisfied that the applicant had a well founded fear of persecution for a Convention reason should he return to Papua New Guinea both now or in the reasonably foreseeable future. Given the nature of the applicant's claims, the Tribunal considered it appropriate to refer the matter to the Department for the Minister's attention under s.417.

Philippines

1001289

21 April 2010, Melbourne

Ms M Urquhart, Member

PHILIPPINES – PARTICULAR SOCIAL GROUP – SINGLE MOTHER – FOREIGN BABY – KIDNAPPING – The applicant claimed to fear persecution due to apprehensions of danger to her Australian baby. She claimed she came to Australia on a fiancée visa but her sponsor did not marry her. She claimed to be a single mother of an Australian-born baby who, she claimed, would be kidnapped in the Philippines and held to ransom from the Australian government. She claimed her sister told her of the dangers of foreign babies being kidnapped in the Philippines and had mentioned groups, squads or gangs responsible for kidnapping babies and holding them to ransom from their countries of nationality. She claimed she was afraid to report her fears as the police could not help her and they were suspected of being involved with the kidnapers. The applicant claimed there were terrorists operating in and around her province who had previously been responsible for kidnappings. She claimed she could give no details about these groups but was convinced by her sister and from media reports that her baby would be at risk from them. She claimed that as a single Filipino woman with a foreign-born baby, there would be no one to help her or assist if her baby was sick. She claimed the father of the child was in contact with her and knew the situation but would not help. She claimed the only help she received was from various welfare organizations and that she had suffered from depression. At the hearing, a witness claimed that the applicant had suffered various hardships and he heard that babies in the Philippines were stolen or sold. He claimed he had helped the applicant obtain welfare and legal assistance in Australia. He claimed gangs and terrorists were smart and they knew that if the Australian government would not pay a ransom, they would advocate for a baby who was at a higher risk because they were a foreigner. He claimed the applicant was constantly crying, lived on

food handouts, second hand clothes and sponsored accommodation and these were no solutions for her. The applicant claimed she could not relocate elsewhere in the Philippines because to obtain employment she would need to return to her area which she considered to be unsafe.

Held: Decision under review set aside

The Tribunal accepted the visa applicant was a single mother of an Australian-born baby, living with her in Australia and that the applicant was a member of a particular social group, being unmarried Filipino mothers of foreign nationals in the Philippines. The Tribunal considered available independent country information on prevailing attitudes to women subjected to serious harm by outlaws and terrorists, and found there was a real chance that state protection would be selectively and discriminatorily withheld from the applicant. The Tribunal found the applicant to be credible, and her claims and circumstances were consistent. The Tribunal found the applicant did not attempt to embellish or exaggerate her claims. The Tribunal accepted the applicant feared her Australian-born child may be kidnapped, that terrorist groups and outlaws were the perpetrators and foreign nationals of any age were targeted for ransom. The Tribunal accepted the claim that the applicant's baby was at a higher risk of harm because she was a foreigner. The Tribunal also accepted that while the Australian government was unlikely to pay a ransom, if an Australian national were kidnapped in the Philippines, diplomatic representatives there would provide assistance. The Tribunal accepted there were laws in relation to the treatment of women in the Philippines but there were major shortcomings in implementing the law. The Tribunal found there was more than a remote possibility and a real chance that state protection would be selectively and discriminatorily withheld from the applicant. The Tribunal accepted that the applicant was suffering from depression and her mental condition was fragile. The Tribunal found she would not be able to rebuild her life as a single mother in the Philippines where her circumstances would continue to put her at risk. Therefore, the Tribunal was satisfied on the evidence before it that the applicant had a well founded fear of persecution for a Convention reason.

Serbia, Republic of

1000587

1 April 2010, Sydney

Mr A Jacovides, Member

SERBIA – POLITICAL OPINION – SERBIAN VOLUNTEER GUARD – RELIGION – CATHOLIC – The applicant claimed to be a citizen of Serbia who had lived in Australia since 2000 under an alias as a citizen of Country 1. He claimed that he had used a false passport from Country 1 to enter Australia and that he had been granted temporary refugee status in Country 2 in 1992. The applicant claimed that he was a member of *Arkan's Tigers* ['Serbian Volunteer Guard', ('Srpska Dobrovoljačka Garda' or SDG)] during the war in the former Yugoslavia, and that he was one of Arkan's many officers. He claimed that when he realised the atrocities Arkan was perpetuating he fled to Country 2. The applicant claimed that he was living in Country 2 with his wife after he left Arkan's paramilitary group, but when he learned that four of Arkan's bodyguards had been killed he became concerned that his wife's parents might betray him. He claimed that he subsequently left his wife and about four years later he assumed his new identity. In 2007, he claimed he was told that his aunt in Serbia had been approached by two police officers who were looking for him and that he did not know why they wanted him. He claimed that he was afraid of "Arkan's men" because he was considered to be a traitor for running away from the group; he feared people who may wish to silence him because he knew what Arkan's men had done during the war; and he feared people who hated Arkan and were opposed to the SDG. He stated that there may be people in the government, including the police and in other positions of power, who would recognise and kill him. The applicant also claimed that he was a Catholic while most Serbians were Orthodox.

Held: Decision under review affirmed

The Tribunal considered the evidence regarding the applicant's nationality, including official letters from Country 2 and other documents from Serbia relating to his background, and accepted that he was a citizen of Serbia. The Tribunal formed the view that some of the dates which the applicant provided regarding his involvement with the SDG were incorrect. It noted that he claimed to have met and worked for Arkan during 1990 and 1991 at a time when information from external sources indicated that Arkan was in a Croatian prison. Nevertheless, the Tribunal accepted that the applicant was involved with the SDG during the war in

the former Yugoslavia. The Tribunal accepted his claim that he acted as an ordinary member of the group and as an officer for its leader. The Tribunal also accepted the applicant's claim that in 1992 he fled from the group and from Serbia. It further accepted that he had not returned to Serbia since then and that he was fearful of returning because he anticipated harm from either supporters of the SDG, its opponents, or the authorities. The Tribunal found that some former members of the SDG had been targeted since the war had ended, however, it formed the view that the targeting related to their activities after the war rather than what they did during the war or as members of the SDG. The Tribunal noted that some SDG members were investigated after the war, but it was satisfied that it was only the leaders who were investigated. The Tribunal found that the applicant did not have a prominent leadership role with the SDG, and he had not been implicated in any activities during the war, or since 1992, which would now or in the reasonably foreseeable future attract the adverse interest of either former SDG members, SDG opponents, or the Serbian authorities. The Tribunal considered the applicant's claim that in Serbia he would be ostracised and discriminated against for being a Catholic, however, after considering information from external sources, the Tribunal formed the view that despite some tensions between the Catholic minority and the Orthodox majority, Catholics in Serbia were not commonly subjected to treatment which amounted to persecution. The Tribunal considered the applicant's claim that two officials visited a relative in Serbia, however, the Tribunal found that the applicant's knowledge regarding this matter was so limited that no conclusions could reasonably be drawn from it, and it could not be satisfied that the inquiries were related to the applicant's involvement with the SDG or that the persons making the inquiries were seeking to locate and harm him. Accordingly, the Tribunal found that there was no real chance that the applicant would be subjected to persecution in Serbia for reasons of political opinion or religion or for any other Convention reason.

Sudan

0902563

23 April 2010, Melbourne

Mr A Gentile, Member

SUDAN – POLITICAL OPINION – DEMOCRATIC UNIONIST PARTY MEMBER – PARTICULAR SOCIAL GROUP – FAMILY OF A POLITICAL ACTIVIST – The applicant claimed to fear persecution on return to Sudan for reason of his anti-government actions and opinions and for reason of his membership of a particular social group, namely his family, given his father's profile as a political activist. He claimed that he had participated in anti-government activities over a number of years, both within Sudan and in India as a student. He claimed, amongst other things, to have been involved in clashes with pro-National Islamic Front (NIF) students in India during a power struggle in the student unions between the pro-NIF and the pro-democratic students. He further claimed that he was personally known to the NIF and that pro-NIF persons, who had been his contemporaries and plants of the repressive state, were now in positions of power in Sudan and could identify him. He also claimed he would be exposed to persecution if he were to return because of his father's political activities who had been battling for democracy and the rule of law in Sudan for almost 50 years. The applicant also made reference to his brother's political activities as an office holder of the Democratic Unionist Party (DUP) in the UK. The applicant gave evidence in person at a Tribunal hearing and essentially clarified his written claims. He also provided documentary material in support of his claims, including several letters from overseas offices of the DUP, information from Amnesty International relating to the human rights situation in Sudan and the applicant's particular circumstances, as well as a summary of his father's history of political activism.

Held: Decision under review set aside

The Tribunal found that the applicant was a credible witness and noted that he had provided a number of documents which corroborated his story and which coincided with independent country information. The Tribunal accepted the applicant's claimed association with the DUP and student associations and found that he had a profile of activism. The Tribunal found that despite the passage of time, considering his encounters with people who are now in positions of power, he would be identified and harmed on his return to Sudan. The Tribunal referred to country information indicating that the current regime does not tolerate any opposition and deals with any kind of challenge to the *status quo* by extrajudicial means. The Tribunal thus found that the applicant faced a real chance of persecution for reasons of his political opinion, now or in the reasonably foreseeable future, should he return to Sudan. The Tribunal also considered the applicant's claim that he would be persecuted as a member of a particular social group, that is, his family, in the sense that

his father before him has a profile as an activist. The Tribunal accepted that the applicant's connection to his father increased the chance that he would be identified on return, noting that his father was still active in his work against the regime in Sudan. The Tribunal therefore found that the applicant's membership of a particular social group was also an essential and significant reason for which he faced persecution on return to Sudan. Accordingly, the Tribunal was satisfied that the applicant faced a real chance of serious harm amounting to persecution from the Sudanese regime and that he had a well founded fear of persecution for a Convention reason.

COUNTRY ADVICE

Burma (Myanmar)

Burma (Myanmar) – Rangoon – Freedom of association – Freedom of assembly – Corruption – Bribery – Ethnic minorities – Religious minorities – MMR35580 – 20 October 2009
Provides information on the various laws and ordinances in Burma (Myanmar) regarding association and assembly and whether or not they are unevenly enforced on the basis of religion or ethnicity. The response also examines bribery and corruption in Rangoon and whether ethnic and religious minorities are subjected to greater demands for the payment of bribes from police and corrupt officials.

China

China – Catholics – Baptism – Rosary prayers – Marian shrines – CHN35792 – 30 November 2009

Provides information on baptism practices in the Chinese Catholic Church; and whether Chinese Catholics should know the rosary prayers.

China – Urumqi riots 2009 – Penalty for hiding rioters – Family planning penalties – Relocation – CHN35745 – 17 November 2009

Provides information on riots in Urumqi in July 2009; maps of Urumqi; who has been arrested after the riots; penalties for having a child before marriage and whether a person can be fined a second time; relocation in China.

China – Divorce – CHN35704 – 7 December 2009

Provides information on divorce procedures in China after the passing of Marriage Law (2001) and the Regulations on Marriage Registration (2003), particularly if one party does not agree to the divorce, or is missing or is in prison. Also examines whether Fujian has its own regulations.

Egypt

Egypt – Military service – Alternative military service – Conscientious objectors – EGY35028 – 18 June 2009

Provides information on compulsory military service and penalties for draft evasion.

Egypt – Coptic Christians – Sameri Saleh – Asylum seekers – Returnees – EGY35749 – 23 November 2009

Provides information on the treatment of failed asylum seekers and other returnees by authorities, and information on the treatment of Coptic Christians.

Fiji

Fiji – Communal violence – Indigenous Fijians – Indo-Fijians – State protection – Widows – Internal relocation – FJI35403 – 15 September 2009

Provides information on relations between indigenous Fijians and Indo-Fijians; available protection against racially motivated attacks; and whether a widow might be at greater risk of such attacks.

India

India – Indian National Lok Dal – Bharatiya Janata Party – Haryana – Hindu Jats – Farmers – IND35809 – 16 December 2009

Provides information on the Indian National Lok Dal (INLD) in Haryana; whether the Bharatiya Janata Party (BJP) or high class Hindus have targeted members of the INLD in Haryana; whether the BJP or high class Hindus have targeted poor farmers in Haryana; and the extent to which state protection is available to targets of political violence in Haryana.

Indonesia

Indonesia – Front Pembela Islam (FPI; Islamic Defenders Front) – Ahmadiyya – Mixed marriages – IDN34570 – 26 March 2009

Provides information on the Front Pembela Islam (FPI; Islamic Defenders Front); the relationship between the FPI and the police; and the relationship between the FPI and the Ahmadiyya. Also provides information on interfaith-marriage in Indonesia.

Iraq

Iraq – Erbil – Khabat – Security situation – Political parties – Islamic groups – Athletes – IRQ35023 – 3 July 2009

Provides information on the security situation in Erbil governorate of northern Iraq; the political parties and armed groups active in this area; and the targeting of athletes in Iraq more generally.

Lebanon

Lebanon – Nahr El-Bared – civilians assisting military – closure of businesses – LBN35456 – 25 September 2009

Provides information on civilian support for the Lebanese Armed Forces during the 2007 conflict at the Nahr El-Bared refugee camp, and whether businesses near Nahr El-Bared closed down during the conflict.

Mongolia

Mongolia – Lesbians – Lesbian, Gay, Bisexual and Transgender persons – State protection – Societal attitudes – Support groups – MNG35228 – 4 September 2009

Provides information on the situation for lesbians, and LGBT persons more generally in Mongolia. Information also provided on the lack of support networks available to lesbians in Mongolia.

Pakistan

Pakistan – Women living alone – Mental Health Care in Pakistan – Availability of carers – PAK35608 – 23 October 2009

Examines the difficulties associated with young, single women living alone in Pakistan and the services currently available for such women (including police protection and welfare services). The response also examines the state of mental health care in Pakistan and the availability of home carers for mental health patients in Pakistan.

Philippines

Philippines – Isneg – Kalinga – Conflict – State protection – Domestic violence – PHL35138 – 16 July 2009

Provides information on the Kalinga and Isneg tribes; information on state protection for victims of domestic violence; the process of issuance of protection orders and how effective its administration.

South Africa

South Africa –Affirmative Action – Violent Crime – Land Rights – Schabir Sheik Trial – ZAF35808 – 15 December 2009

Provides information on the affirmative action policies of the ANC government and perceptions of discrimination of white people in South Africa. The response also briefly examines the latest crime statistics; the South African authorities response to such levels of crime; land rights, claims and compensation in South Africa.

Sri Lanka

Sri Lanka – Muslims – Politician – Sri Lanka Muslim Congress – Religion – LKA35710 – 16 November 2009

Provides information on the treatment of Muslim politicians who speak out against the government; and on the Muslim population in Sri Lanka, including those who speak Tamil.

Ukraine

Ukraine – Human rights activists – Lesbians – Protection – Censorship – Relocation – UKR35540 – 7 October 2009

Provides information on the treatment of, and police protection for, human rights activists, particularly those who advocate on behalf of lesbians. Advice is also included on censorship and relocation

Vietnam

Vietnam – HIV/AIDS – Hepatitis B – Stigma/Discrimination – Law on HIV/AIDS Prevention and Control – Household Registration – Relocation from rural to urban areas – VNM35043 – 23 June 2009

Provides information on the status of people with HIV in Vietnam; stigma and discrimination surrounding HIV/AIDS; Vietnam's 2006 Law on HIV/AIDS Prevention and Control; household registration and changing registration when relocating; registration difficulties faced by migrants when relocating, particularly when relocating to Ho Chi Minh City.

HIGH COURT JUDGMENTS

MIAC v SZMDS

[2009] HCA 16

High Court of Australia, Gummow ACJ, Bell, Crennan, Heydon & Kiefel JJ, S193/2009, 26 May 2010

This was an appeal from an order of the Federal Court setting aside a decision of the Refugee Review Tribunal (the Tribunal) refusing to grant a Protection visa.

The respondent, a citizen of Pakistan, claimed to fear persecution due to his homosexuality. He had travelled to and lived in the United Arab Emirates (UAE) and claimed to have had relationships with two other men. The Tribunal was not satisfied that he was a homosexual who feared persecution for two key reasons. The first was his return to Pakistan for three weeks in 2007 and the second was his failure to seek asylum when he briefly visited the United Kingdom in 2006. The Tribunal did not accept his explanations, and found that these two actions were inconsistent with his claim to fear persecution in Pakistan.

The Federal Court found that the Tribunal's reasoning was illogical and irrational as it assumed others in Pakistan would discover that the respondent was homosexual during his brief visit there without making findings as to how that could be, and that there was no logical connection between his failure to apply for protection in the United Kingdom and his fear of persecution in Pakistan.

On appeal, the appellant contended that jurisdictional error could not be established by mere illogicality or irrationality in fact finding or alternatively, the illogicality or irrationality must be so extreme as to show that the opinion formed could not possibly be formed by a Tribunal acting in good faith. It was further contended that there was no illogicality or irrationality in the Tribunal's findings.

Held: *per Heydon, Bell & Crennan JJ (Gummow ACJ & Kiefel J dissenting) Appeal allowed*

per Gummow ACJ, Kiefel, Crennan & Bell JJ

- (i) Whilst not every instance of illogicality or irrationality in reasoning could give rise to jurisdictional error, if illogicality or irrationality occurs in the context of jurisdictional fact finding jurisdictional error is established.
- (ii) The satisfaction of the Minister under s.65(1)(a)(ii) of the *Migration Act 1958* is a condition precedent to the discharge of the obligation to grant or refuse to grant a protection visa, and is a jurisdictional fact upon which the exercise of that authority is conditioned.

per Bell & Crennan JJ (Heydon J agreeing)

- (iii) The Tribunal's decision was not illogical or irrational so as to give rise to jurisdictional error. If reasonable minds might differ in respect of the conclusions to be drawn from probative evidence, a decision cannot be said to be illogical or irrational or unreasonable, simply because one conclusion has been preferred to another possible conclusion.

per Bell & Crennan JJ

- (iv) A decision might be said to be illogical or irrational if only one conclusion is open on the evidence and the decision maker does not come to that conclusion, or if the decision was simply not open on the evidence or if there was no logical connection between the evidence and the inferences or conclusions drawn.

per Gummow ACJ & Kiefel J dissenting

- (v) To decide by reasoning from the circumstances of the visits to the United Kingdom and Pakistan that the respondent was not to be believed in his account of the life he led whilst residing in the UAE was to make a critical finding by inference not supported by logical grounds and therefore a jurisdictional error. The finding was critical because from it the Tribunal concluded that the respondent was not a member of a particular social group and could not have the necessary well-founded fear of persecution.

FEDERAL COURT JUDGMENTS

Hasran v MIAC

[2010] FCAFC 40

Federal Court of Australia, Jacobson, Gilmour & Foster JJ, NSD 126 of 2010, 5 May 2010

This was an appeal from a judgment of the Federal Magistrates Court dismissing an application for judicial review of a decision of the Migration Review Tribunal (the Tribunal) to affirm a decision to cancel a Student (Temporary) (Class TU) Subclass 573 visa.

The Tribunal wrote to the appellant pursuant to s.359A of the *Migration Act 1958* (the "Act") inviting him to comment on adverse information by 3 August 2009. On 4 August 2009, the Tribunal received a request from the appellant seeking an extension of time. By letter dated 5 August 2009, the Tribunal notified the appellant that as his request fell outside the time for making such a request, it was unable to grant the extension of time. It further notified the appellant that he had lost his entitlement to appear before it and accordingly, the Tribunal "will now make a decision based on the material before it". The Tribunal, pursuant to ss.359C(2), 360(2) and (3), and 363A of the Act, proceeded to a decision without inviting the appellant to appear at a hearing.

The principal issues on appeal were whether upon the proper construction of ss.359A, 359C, 360 and 363A, the Federal Magistrate was in error in finding that the Tribunal did not have the power to afford the appellant an hearing and whether the Federal Magistrate erred in finding that the Tribunal had no power under s.359B(4) to grant an extension of time where the request for an extension was made after the expiration of the time stipulated in the invitation.

Held: *per curiam*, appeal dismissed

- (i) The language of s.363A clearly operates so as to remove any discretion which the Tribunal may have had to allow a person to do something where a provision of Part 5 of the Act states that the person is not entitled to do it. The appellant's failure to respond to the Tribunal's letter under s.359A had the effect of attracting the cascading operation of ss.359C(2), 360(2)(c) and, critically, s.360(3) which enlivened the application of s.363A, the effect of which was to provide that the Tribunal did not have power to permit the appellant to appear at an oral hearing.
- (ii) The Tribunal's discretion under s.359B(4) to extend time to respond to an invitation under s.359A is lost if a request is made after the expiry of the prescribed period.

MIAC v SZNVW

[2010] FCAFC 41

Federal Court of Australia, Keane CJ, Emmett & Perram JJ, NSD 96 of 2010, 10 May 2010

This was an appeal from a judgment of the Federal Magistrates Court quashing a decision of the Refugee Review Tribunal (the Tribunal) refusing to grant the respondent a protection visa.

The Tribunal found the respondent was not a credible witness. In the course of the review the respondent provided a document indicating a professional opinion supportive of his claim that he was suffering a depressive condition. Noting that it had no medical evidence before it to suggest that the respondent's psychological state had affected his memory, the Tribunal was not satisfied that his psychological state explained the inconsistencies and deficiencies in his evidence. The Tribunal did not receive or seek further medical evidence and ultimately gave the document no weight. It did not accept the applicant's explanation for his inconsistent recall and assessed his evidence as a person not suffering any impairment.

After the decision was made, a psychologist and psychiatrist made further observations concerning the effect of the respondent's mental or emotional impairments upon his demeanour, memory and consistency. On the basis of this evidence, the Federal Magistrates Court held that the respondent probably gave evidence while suffering from mental impairments affecting his memory. The Court concluded that the

respondent was denied a fair opportunity of having the Tribunal assess whether the defects in his evidence were attributable to a mental impairment, or to concerns about veracity.

Held: *per Keane CJ (Emmett and Perram JJ agreeing)*, appeal upheld

per curiam

(i) There was no breach of s.425.

per Keane CJ (Emmett agreeing)

(ii) There was no foundation for the magistrate's ultimate conclusion that "the applicant was denied a fair opportunity of having the Tribunal assess whether those defects [in addition to demeanour, memory and consistency] were attributable to a mental impairment, or to concerns about veracity."

(iii) The Tribunal was not obliged to conduct an inquiry to discover whether the respondent's case might be better put or supported by better evidence. The applicant had the opportunity to adduce such evidence as to his psychological state and its impact on his "demeanour, memory and consistency", as he wished. There was no suggestion that his capacity to make decisions in his own interests in that regard was impaired by his condition.

per Perram J

(iv) The Tribunal's function was not stultified or frustrated. The respondent suffered the misfortune of not running his case as well as he might have.

FEDERAL MAGISTRATES COURT JUDGMENTS

Lu v MIAC & Anor (No.2)

[2010] FMCA 251

Federal Magistrates Court of Australia, Driver FM, SYG 3032 of 2009, 19 May 2010

The applicant, a citizen of China, sought judicial review of a decision of the Migration Review Tribunal (the Tribunal) affirming a decision of the delegate of the respondent not to revoke the automatic cancellation of her Student (Temporary)(Class TU) visa.

The applicant's visa was automatically cancelled pursuant to s.137J of the *Migration Act 1958* (the Act). The applicant, through her then migration agent applied for revocation of the automatic cancellation of her student visa claiming exceptional circumstances as a result of a miscarriage and psychological problems. This application was refused by a delegate of the Minister and the applicant lodged a review of the decision with the Tribunal. The Tribunal sent the applicant's agent an invitation to comment on information as well as an invitation to provide additional information about her claimed exceptional circumstances. Neither the applicant nor her agent responded to the letter within the prescribed period of time and the Tribunal proceeded to decide the review pursuant to s.359C of the Act without conducting a hearing.

Before the Court, the applicant contended that the decision of the Tribunal was affected by fraud committed by a third party. The applicant claimed that she paid a large sum of money to a person that represented herself as an agent for a solicitor. This person told the applicant that the purported solicitor had advised her not to respond to the Tribunal's letter which thereby disabled the Tribunal from the due discharge of its statutory functions.

Held: Appeal allowed. Tribunal decision quashed and remitted for redetermination

(i) There was jurisdictional error as fraud by a third party resulted in the Tribunal's process being disabled. Adopting the High Court's language in *SZFDE v MIAC* [2007] HCA 35 at [51] (*SZFDE*), the Tribunal "was disabled from the due discharge of its imperative statutory functions with respect to the conduct of the review".

(ii) There is no limitation of the principles enunciated to the acts or omission of person holding themselves out to be registered migration agents.

- (iii) *SZLHP v MIAC* [2008] FCAFC 152 was distinguishable on the basis that the applicant was not “relevantly” complicit in the fraud as the money she paid was not applied to the purpose for which it was paid.

SZNWC v MIAC
[2010] FMCA 266

Federal Magistrates Court of Australia, Smith FM, SYG 2062 of 2009, 13 May 2010

The applicant, a national of Bangladesh, sought judicial review of a Refugee Review Tribunal (the Tribunal) decision affirming a decision to refuse to grant a Protection visa.

The applicant claimed to fear persecution on the basis of his membership of the particular social group of Bangladeshi ship deserters, and feared sanctions under the Bangladeshi ship deserter laws. The Tribunal accepted that the applicant belonged to this particular social group, and did face a real chance of serious harm, but found that what he feared was punishment for the act of desertion and not from his identity as a ship deserter, and alternatively that the penalties feared by the applicant would not be persecution within the Convention meaning because the Bangladeshi legislation appeared to have the legitimate objective of securing Bangladesh’s reputation as a source of merchant seamen.

The applicant claimed, amongst other things, that the Tribunal committed jurisdictional error by finding that the applicant’s fear of punishment for desertion was not Convention related because the fear was for the act of desertion rather than because he was a member of the particular social group, and that the Tribunal erred in its alternate finding by accepting the legitimacy of the object of the Bangladeshi laws, without also examining and making findings on whether the potential penalties were appropriate and adapted to achieving the object.

Held: RRT decision quashed and remitted for reconsideration

- (i) The Tribunal’s findings, that the applicant feared being targeted by reason of a peculiar characteristic of all members of the particular social group to which the applicant belonged, rendered the distinction drawn by the Tribunal between the act of desertion and membership of a particular social group of ship deserters, one which it was not open to it without making an error of law, involving a failure correctly to appreciate the meaning and application of the Convention definition to its findings, and therefore jurisdictional.
- (ii) The Tribunal’s alternative finding, that the Bangladeshi law served a legitimate objective of promoting Bangladesh as a source of merchant seamen, and was not designed to discriminate on any Convention-related ground, overlooked the need to assess the proportionality of the means adopted in Bangladesh to discourage ship desertions, and whether those laws had consequences which were not ‘appropriate and adapted’ to achieving that object.

Singh v MIAC
[2010] FMCA 305

Federal Magistrates Court of Australia, Jarrett FM, BRG 463 of 2009, 6 May 2010

The applicants sought judicial review of a decision by the Migration Review Tribunal (the Tribunal) that it lacked jurisdiction to review a decision to cancel their Subclass 573 Higher Education Sector visas because the review applications were lodged outside of the mandatory prescribed time.

On 5 February 2009, the applicants appointed an authorised recipient and provided a street address for communication. The authorised recipient wrote to the Department on 16 February 2009. The letterhead of the correspondence contained a PO Box address under the heading ‘Postal Address’ and an email address. The Department notified the authorised recipient of the visa cancellations by letter dated 5 March 2009. Subsequently, the authorised recipient wrote to the delegate confirming receipt of the letters and noting they had been ‘incorrectly’ sent to his post office box rather than the street address. On 17 March 2009 the delegate sent by email a new letter addressed to the authorised recipient enclosing the cancellation decision and nominating 26 March 2009, as opposed to 25 March 2009 as stated in the original letters, as the time by

which any review application needed to be made. The Tribunal found the review applications had been made after the mandatory time limit had expired – namely on 25 March 2009.

The applicants contended, inter alia, that the Minister was estopped from denying the efficacy of the second notice issued by the delegate on 17 March 2009 which identified 26 March 2009 as the deadline for lodging the review application.

Held: Application dismissed

- (i) The Tribunal found correctly that it did not have jurisdiction to entertain the application.
- (ii) The delegate was entitled to send the relevant notices to the post office box address. As that address was specified by the authorised recipient in the letterhead of his correspondence, that address was one of the last business addresses provided to the Minister by the authorised recipient for the purposes of receiving documents.
- (iii) The specification of a second date for the institution of an application for review on the second notification had no legal effect as there could not be two timetables for the commencement of a review application. The text of the legislation does not permit of a construction that would accommodate multiple notifications so that the time limit might be calculated from the latest notification.
- (iv) To the extent that the Tribunal decided that r.2.55 governed the way in which the relevant notifications should be given to the authorised recipient, it was in error as r.2.55 only applies to the giving of a document to "*a holder or former holder of a visa relating to... the cancellation of a visa under the Act*". It says nothing of giving a document to person who is validly notified as the authorised recipient for the visa holder or former visa holder. The relevant notification provisions were ss.494A, 494B, 494C and 494D of the Act and not r.2.55.
- (v) There was no indefinable representation by the *tribunal* that the applicants relied upon. The representation was made by the Minister, someone not a party to the review. In any event, estoppel cannot operate to confer on the tribunal a jurisdiction that it does not possess.

LEGISLATION UPDATE

Legislative developments of relevance to the work of the Migration Review Tribunal and the Refugee Review Tribunal are noted below. The following Acts, Regulations and Instruments are accessible via the Commonwealth Law of Australia (COMLAW) website – <http://www.comlaw.gov.au>

Legislation Passed

ACTS

Australian Information Commissioner Act 2010

Freedom of Information Amendment (Reform) Act 2010

Passed by Parliament on 13 May 2010, among other things, these Acts amend several existing Commonwealth Acts, including the *Freedom of Information Act 1982*.

REGULATIONS

Migration Amendment Regulations 2010 (No. 5)

These Regulations amend the Migration Regulations 1994 to prevent certain applications for General Skilled Migration visas being made on or after 8 May 2010 until after a specified date as a result of anticipated changes to the Skilled Occupation List.

INSTRUMENTS

Specification under subparagraph 1218(1)(b)(iii) in Schedule 1 to the Migration Regulations 1994 - Travel Agents for PRC Citizens Applying for Tourist Visas - May 2010

Subparagraph 1218(1)(b)(iii) provides that where Tourist visa (Subclass 676) applicants from the People's Republic of China (PRC) intend to travel to Australia as a member of a tour group, the tour must be organised by a travel agent specified in an instrument in writing. The purpose of the instrument is to specify these approved travel agents.

CASELOAD OVERVIEW

MRT Decisions – April 2010

Decision Category	Primary decision set aside	Primary decision affirmed	No jurisdiction Withdrawn	No jurisdiction Other	Total
Bridging refusal	3	7	1	0	11
Visitor refusal	35	24	2	9	70
Student refusal	14	24	6	6	50
Temporary business refusal	9	13	7	2	31
Permanent business refusal	13	7	6	3	29
Skill linked refusal	60	40	7	7	114
Partner refusal	79	22	10	2	113
Family refusal	17	21	1	1	40
Student cancellation	36	43	1	4	84
Sponsor approval refusal	2	4	2	1	9
Other	23	11	4	5	43
Total	291	216	47	40	594

RRT Decisions – April 2010

Country	Primary decision set aside	Primary decision affirmed	No jurisdiction Withdrawn	No jurisdiction Other	Total
Albania	0	0	0	1	1
Bahrain	0	1	0	0	1
Bangladesh	0	1	0	1	2
Burma (Myanmar)	1	0	0	0	1
China (PRC)	10	59	0	4	73
Colombia	1	0	0	0	1
Congo, Democratic Republic of	1	0	0	0	1
Egypt	4	4	0	0	8
Ethiopia	1	0	0	0	1
Fiji	4	12	0	2	18
Ghana	1	0	0	0	1
Hungary	0	1	0	0	1
India	1	20	0	1	22
Indonesia	0	7	0	2	9
Iran	1	1	0	0	2

Iraq	1	0	0	0	1
Jordan	0	2	0	0	2
Korea, Republic Of	0	2	0	0	2
Lebanon	1	3	0	0	4
Malaysia	0	16	0	1	17
Mauritius	0	1	0	0	1
Nepal	2	0	0	0	2
Nigeria	0	2	0	0	2
Papua New Guinea	0	1	0	0	1
Philippines	1	3	0	0	4
Samoa	0	1	0	0	1
Serbia	0	1	0	0	1
South Africa	0	1	1	0	2
Sri Lanka	0	4	1	1	6
Sudan	1	0	0	0	1
Syria	1	0	0	0	1
Thailand	0	1	0	0	1
Total	35	152	2	13	202

PUBLICATION OF TRIBUNAL DECISIONS

The Tribunals publish decisions on AustLii that are considered to be of 'particular interest'. If you would like published decisions of a particular kind, or a particular decision, please let us know by contacting enquiries@mrt-rrt.gov.au.

Decisions which are regarded by the Tribunals as of particular interest are decisions: identified as representing a broad cross-section of decisions having regard to factors such as the visa subclass and the outcome of the review; or where there is detailed consideration of legal arguments or policy issues; or where the factual circumstances are complex or unusual or where there is or is likely to be significant external interest; or where there is clear precedential value. The Tribunals aim to publish at least 40% of decisions made by each Tribunal.

Between 1 January 2010 and 30 April 2010, 47% of all substantive decisions made have been published (46% of MRT and 49.5% of RRT). This does not include 'Withdrawn' or 'No Jurisdiction' cases.

MRT decisions are selected and vetted for publication each day, with publication delayed by approximately seven days to allow for applicants to be notified of the Tribunal's decision. RRT decisions are also selected daily for editing. Once edited, the decisions are quality checked and sent to AustLII for publishing on their website.

The Refugee Review Tribunal has a statutory obligation to ensure that the published version of a decision statement must not contain any information which may identify the applicant or any relative or other dependent of the applicant. Decisions that require extensive editing to meet this obligation may not be published. The Migration Review Tribunal is not similarly restricted but may direct that certain information in a decision not be published in the public interest.

If a published decision of the MRT or RRT causes concern to a person with a close interest or involvement in the decision, a request for deletion of portions of the decision or its withdrawal from AustLii may be made by request to enquiries@mrt-rrt.gov.au.

A selection of Tribunal decisions are available on the Migration Review Tribunal and Refugee Review Tribunal's website located at <http://www.mrt-rrt.gov.au/>.

The website also contains information about how to apply to the Tribunals, how the Tribunals are organised, the function of the Tribunals, caseload statistics, as well as copies of this and previous Bulletins. The website is updated on a regular basis.

The Migration Review Tribunal and the Refugee Review Tribunal is not liable for any reliance by any person on the summaries contained in this Bulletin. Each summary provides a guide only to each decision and should not, under any circumstance, be used as a substitute for the full text of a decision.

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